IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

LA.App..No. 338 of 2002(D)

LAR.19/1996 of SUB COURT, PAYYANNUR
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APPELLANT: CLAIMANT NO.B

KURUNGON KUNHIRAMAN S/O.CHIRI,AGED
54 YEARS,RAMANTHALI SMSOM,PALAKKAD DESOM.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.K.MOHANAKANNAN

RESPONDENTS: CLAIMANTS A,G & D
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1. SAIDUMMARAKATH VADAKKEPURAYIL ABDULLA
M.M.HOUSE,NEAR PAZHAYANGADI RAILWAY STATION,
PAZHANGADI.

2. GOVERNMENT OF KERALA,REPRESENTED BY THE
DISTRICT COLLECTOR,KANNUR.

3. THE SPECIAL TAHSILDAR (L.A.),THALASSERY.

BY ADV. SRI.P.M.PAREETH FOR R1
GOVERNMENT PLEADER SRI. BASANT BALAJI FOR R2 AND R3

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 29/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J

L.A.A. 338/2002

Dated this the 29th day of October, 2007

JUDGMENT

B claimant in L.A.R.19/1996 on the file of the Subordinate Judge's Court, Payyannur, is the appellant. This appeal is filed challenging the decree and judgment passed by the Court below by which it was found that the first respondent/A claimant is entitled to get the compensation awarded in the land acquisition case. The short facts necessary for the disposal of this appeal are as follows:-

2. An extent of 0.1388 Hectare of land comprised of R.S. No.23/Part of the Ramanthali Village was acquired for a public purpose as per award No.16/95 dated 1.11.1995. The compensation award was Rs.53,740/-. There was dispute between the appellant and the first respondent, who was entitled to get the compensation amount. So the matter was referred to the Subordinate Judge's Court under Section 30(2) of the Land Acquisition Act. The amount was also deposited in the Court. The parties appeared and filed their statements.

3. Both sides admitted that the property originally belonged to Ramanthali Devaswom and as per a marupat deed No.2759/56, one Yusuf Haji was in possession of property. Yusuf Haji sold the entire property to B claimant. B claimant sold 3.45 acres of land to the appellant under A4, A5 and A6 documents. He also sold 10 cents of land to one Ambu and 15 cents of land to one Mariyumma. According to the appellant, the land acquired in this case was from the property sold to him by B claimant. According to B claimant, the property was acquired from the balance portion in his possession and he alone is, therefore, entitled to get the compensation. So real dispute arising for consideration is as to whether the property acquired, form part of the property or A claimant, or it forms part of the property of B claimant. The claim of the appellant was resisted by B claimant contending that the property sold to the appellant lies on the western side of a public road. In Ext.A4, A5 and A6 documents the eastern boundary is road. To get over the difficulty, appellant came forward

with a case that though the eastern boundary of his properties were stated as road, that road was not in existence at the time of acquisition. According to the appellant, there was another road further east of the existing road and because of the inconvenience caused to the general public, he permitted the general public to have a new road put up through his property and thereafter, his property was divided into two plots. The major part lies on the west and small plot on the eastern side of the road. So the real question arising for consideration is whether the appellant is having any property on the eastern side of the existing road.

4. Ext.A1 is the deed of marupattam by virtue of which Yusuf Haji obtained 4.16 ¾ acres in R.S. No. 23 and 24/1. Ext.A10 shows that ceiling proceedings were initiated against Yusuf Haji. Ext.A10 shows that appellant obtained 3.45 acres in R.S. No.23 and 24/1. It had also come out in evidence that Yusuf Haji sold the entire property to one Abdulla, who was B claimant. He sold 3.45 acres of land to the appellant under A4, A5 and

A6 sale deeds. Subsequently, Abdulla assigned 10 cents of land to one Ambu under Ext.A7 and 15 cents of land in R.S. 23 to one Mariyumma.

5. There is absolutely no materials to show that in addition to the road now in existence, there was any other road was in existence further east of the present road. Exts.X1(a) and X1(b) are the two plans prepared by the land acquisition authority. Ext.B2 is the claim preferred by the appellant before the Land Acquisition Officer. As rightly observed by the Court below, Exts.A4 and A5 do not cover any property comprised in R.S. 24, Ext.A6 in respect of 90 cents in R.S. 23 and 70 cents in R.S. No. 24/1. Ext.X1 shows that no property comprised in R.S. No. 24/1 was acquired for improving the existing roads. The properties were acquired from R.S.Nos.23/2, 22/6, 22/4 and not from 24/1. So the contention of the appellant that he is entitled to get compensation for the property acquired in R.S.No. 24/1 is without any merit. The Court below, after considering the material on record, came to the right conclusion that the appellant

failed to establish his title over the acquired property. So the judgment and decree passed by the trial Court do not call for any interference. Appeal is only to be dismissed.

In the result, Land Acquistion Appeal is dismissed. No cost.

K.PADMANABHAN NAIR
Judge

mrcs